

July 11, 2002

To: All Department Heads

From: David E. Janssen
Chief Administrative Officer

**CONTRACTING POLICY AND PROCEDURE: IMPLEMENTATION INSTRUCTIONS
FOR CONTRACTOR EMPLOYEE JURY SERVICE PROGRAM**

On February 26, 2002, the Board of Supervisors adopted the Contractor Employee Jury Service Program Ordinance, Chapter 2.203 of the County Code, requiring County contractors/vendors to provide their full-time California employees with reasonable jury service benefits. The Board subsequently approved an amendment to the Ordinance on June 11, 2002 to address specific procurement issues raised by the original ordinance. Exhibit A of the attachment provides complete Ordinance language. This memorandum and the attachments provide instructions for implementing the Contractor Jury Service Program (Program).

As specified in the amended Ordinance, the amended Program requirements are applicable to contracts (including contract extensions) and purchase orders with effective dates after July 11, 2002. Departments that have solicitations underway that will result in a contract/extension approval, or purchase order issuance July 11, 2002 or later, must also incorporate the new Program requirements. Specifically, contractors, as defined in the Ordinance, are required to have and adhere to a written policy that allows its full-time employees who are residents of California to receive, on an annual basis, no less than five days of regular pay for actual jury service.

The initial Ordinance was applicable to contracts effective May 28, 2002. The Ordinance amendment specifies that contracts that commence in the interim period between May 28, 2002 and July 11, 2002, shall be subject to the initial Ordinance provisions only if the solicitations for such contracts stated that the Ordinance would be applicable.

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The Ordinance requirements apply to all County contractors/vendors that receive an aggregate sum of \$50,000 or more in any 12-month period under one or more County contracts or subcontracts, including all suppliers and service providers, nonprofits, community-based organizations, small businesses, and master agreement vendors, unless specifically excepted, as indicated below. A contractor that does not receive an aggregate sum of \$50,000 or more in any 12-month period under one or more County contracts does not meet the definition of a contractor for the purpose of this Program and is not required to provide jury service benefits.

Exceptions

In addition to the exclusion of contractors that do not meet the Program definition of a contractor, there are exceptions to the Program for contractors that: 1) are a small business that meets specified size and gross annual revenue limits; or 2) have a collective bargaining agreement that expressly provides that the employee jury service benefit is superseded by the collective bargaining agreement.

Contracts

“Contracts” subject to the Program are specifically defined in the Ordinance, as “any agreement to provide goods to, or perform services for, or on behalf of, the County,” (e.g., the acquisition of all services, supplies, and equipment, including concessions, leased equipment, and Living Wage, technology, and construction contracts). The definition also specifically excludes a number of contract/purchase transactions from the definition of “contract.”

The new policy and the implementing procedures will be discussed at a future Contract Managers Network meeting and included in the new training curriculum on the basic principals of County contracting.

Please let me know if you have any questions, or your staff may contact Nan Flette of this office at (213) 974-1168; David Michaelson of County Counsel at (213) 974-1832; Joe Sandoval of the Internal Services Department (ISD), Purchasing Division at (323) 267-2670; or Kathy Hanks of the ISD, Contracting Division at (323) 267-3101.

DEJ:LS
MKZ:NF:nl

Attachment

c: Administrative Deputies
Countywide Contracting Network (via e-mail)

**IMPLEMENTING INSTRUCTIONS FOR
CONTRACTOR EMPLOYEE JURY SERVICE PROGRAM
Chapter 2.203 of the County Code**

On February 26, 2002, the Board of Supervisors adopted County Code Chapter 2.203, creating the County Contractor Employee Jury Service Program (Program) and subsequently, on June 11, 2002, adopted an amendment to the Ordinance to address specific procurement issues raised by the initial Ordinance. Complete Ordinance language is provided in **Exhibit A**. In adopting this Program, the Board made a finding that many businesses do not offer, or are reducing, or even eliminating, compensation to employees who serve on juries. The Board found that this creates a potential financial hardship for employees who do not receive their pay when called to jury service, and that those employees often seek to be excused from having to serve. Further, the Board noted that although changes in the court rules make it more difficult to excuse a potential juror on grounds of financial hardship, potential jurors continue to be excused on this basis, especially from longer trials, and that this reduces the number of potential jurors and increases the burden on employers, such as the County of Los Angeles, who pay their permanent, full-time employees while on juror duty. For these reasons, the County of Los Angeles determined that it is appropriate to require that businesses with which the County contracts possess reasonable jury service policies. **The requirements of the Ordinance are effective for all contracts with effective dates of July 11, 2002 or later, including optional contract extensions that are exercised July 11, 2002 or later.**

Note: the initial Ordinance was applicable to contracts effective May 28, 2002. The Ordinance amendment specifies that contracts that commence in the interim period between May 28, 2002 and July 11, 2002, shall be subject to the initial Ordinance provisions only if the solicitations for such contracts stated that the Ordinance would be applicable.

- ❑ **Exhibit B** provides the standard solicitation language that shall be incorporated into all solicitations for contracts that will be effective July 11, 2002 or later.
- ❑ **Exhibit C** provides the Contractor Employee Jury Service Program Application for Exception and Certification Form that must be completed by all relevant contractors prior to award of contracts over \$5,000; for competitive contracts, the form must be submitted with a proposal/bid.
- ❑ **Exhibit D** provides the standard contract language that shall be incorporated into all eligible contracts effective July 11, 2002 or later.

I. Definitions

The Contractor Jury Service Program Ordinance includes the following definitions:

A. **“Contractor”** means a person, partnership, or other entity which has a contract (including purchase orders) with the County or a subcontract with a County contractor and has or will receive an aggregate sum of \$50,000 or more in any 12-month period under one or more such contracts or subcontracts. A contractor that does not meet this definition is not required to comply with the Program requirements.

B. **“Employee”** means any California resident who is a full-time employee of a contractor under the laws of California.

Note: The requirement applies to contractor employees whether or not they are working specifically on the County project. Only citizens can serve on a jury.

C. **“Contract”** means any agreement with a contractor to provide goods to, or perform services for, or on behalf of, the County, but does not include:

1. A contract where the Board finds that special circumstances exist that justify a waiver of the requirements; or
2. A contract where Federal or State law, or a condition of a Federal or State program, mandates the use of a particular contractor; or
3. A purchase made through a State or Federal contract; or
4. A monopoly purchase that is exclusive and proprietary to a specific manufacturer, distributor, or reseller, and must match and be integrated with existing supplies, equipment, or systems maintained by the County pursuant to the Los Angeles County Purchasing Policy and Procedures Manual, section P-37000 or a successor provision; or
5. A revolving fund (petty cash) purchase pursuant to the Los Angeles County Fiscal Manual, section 4.4.0 or a successor provision; or
6. A purchase card purchase pursuant to the Los Angeles County Purchasing Policy and Procedures Manual, section P-2810 or a successor provision; or
7. A non-agreement purchase with a value of less than \$5,000 pursuant to the Los Angeles County Purchasing Policy and Procedures Manual, section A-0300 or a successor provision; or

8. A bona fide emergency purchase pursuant to the Los Angeles County Purchasing Policy and Procedures Manual, section PP-1100 or a successor provision.

*Note: Except as provided below under **Section III. Exceptions**, this requirement applies to all suppliers and service providers, including nonprofits, community-based organizations, small businesses, and master agreement vendors. It does not apply to real estate leases.*

If a department determines that special circumstance exist to justify waiver of the jury service requirement, the Board letter recommending the contract award shall include a recommendation that the Board make such a finding and the Purpose/Justification section of the Board letter shall include full discussion of the special circumstances.

- D. **“Full time”** means 40 hours or more worked per week, or a lesser number of hours if: 1) the lesser number is a recognized industry standard as determined by the Chief Administrative Office, or 2) the contractor has a long-standing practice that defines the lesser number of hours as full time.

Note: Employees of contractors working 40 hours or more per week providing short-term, temporary services (90 days or less within a 12-month period) shall not be considered full-time employees for purposes of this requirement.

- E. **“County”** means the County of Los Angeles or any public entities for which the Board of Supervisors is the governing body.

II. Applicability

The requirements of this Ordinance are applicable to contracts and purchase orders and extensions of contracts and purchase orders that are effective July 11, 2002 or later.

A. Standard Solicitation Language and Certification Form

New solicitations and solicitations currently underway that will result in a contract award, or purchase order issuance, that is effective July 11, 2002 or later must comply with the Jury Service Program requirements.

Exhibit B provides the required standard solicitation language approved by County Counsel. Exhibit C provides the Certification Form that must be completed by all bidders/proposers for contracts with an effective date of July 11, 2002 or later.

B. Contracts and Purchase Orders - Standard Language

Exhibit D provides standard contract language, approved by County Counsel, which shall be included in all contracts and purchase orders

C. Optional Contract Extensions

Departments that intend to exercise optional annual contract extensions that will be effective July 11, 2002 or later shall inform the contractor of the requirements and seek compliance, at no additional contract cost. If permitted under the existing contract terms, the contracting department may consider a contract cost increase, if determined to be in the best interest of the County.

1. Contractors who agree to the amended contract terms shall enter into a contract amendment containing the required contractual language and also complete a Certification Form.
2. If the existing contractor declines to provide the required benefits and does not meet any of the exceptions, the contracting department shall notify the Board and request authority to continue the existing contract on a month-to-month basis, pending completion of a new solicitation.

III. Exceptions

As indicated in the Ordinance, a bidder/proposer who meets the definition of contractor may request and receive an exception from the jury service requirements under the following circumstances:

- A. Bidder/proposer is subject to a Collective Bargaining Agreement that expressly provides that it supersedes all provisions of the County's Jury Service Program (a copy of the Collective Bargaining Agreement must be provided).
- B. Bidder/proposer qualifies as a small business, as defined below:
 1. Has ten or fewer employees during the contract period, including full-time and part-time employees; and,
 2. Has annual gross revenues in the preceding twelve months which, if added to the annual amount of the contract awarded, are \$500,000 or less; and,
 3. Is not an affiliate or subsidiary of a business dominant in its field of operation.

“Dominant in its field of operation” means having more than ten employees and annual gross revenues in the preceding twelve months, which, if added to the annual amount of the contract awarded, exceed \$500,000.

“Affiliate or subsidiary of a business dominant in its field of operation” means a business which is at least 20 percent owned by a business dominant in its field of operation, or by partners, officers, directors, majority stockholders, or their equivalent, of a business dominant in that field of operation.

Enforcement and Remedies

For a contractor’s violation of any of the contractor employee jury duty requirements, the contracting department may:

- A. Recommend to the Board of Supervisors the termination of the contract; and/or,
- B. Seek the debarment of the contractor pursuant to County Code Chapter 2.202, Contractor Non-Responsibility and Debarment.

**STANDARD SOLICITATION LANGUAGE FOR THE
CONTRACTOR EMPLOYEE JURY SERVICE PROGRAM**

Jury Service Program

The prospective contract is subject to the requirements of the County's Contractor Employee Jury Service Ordinance ("Jury Service Program") (Los Angeles County Code, Chapter 2.203). Prospective contractors should carefully read the Jury Service Program (See Exhibit __), and the pertinent jury service provisions of the model/sample contract (See Exhibit __), both of which are incorporated by reference into and made a part of this RFP. The Jury Service Program applies to both contractors and their subcontractors. Proposals that fail to comply with the requirements of the Jury Service Program will be considered non-responsive and excluded from further consideration.

1. The Jury Service Program requires contractors and their subcontractors to have and adhere to a written policy that provides that its employees shall receive from the contractor, on an annual basis, no less than five days of regular pay for actual jury service. The policy may provide that employees deposit any fees received for such jury service with the contractor or that the contractor deduct from the employee's regular pay the fees received for jury service. For purposes of the Jury Service Program, "employee" means any California resident who is a full-time employee of a contractor and "full time" means 40 hours or more worked per week, or a lesser number of hours if: 1) the lesser number is a recognized industry standard as determined by the County, or 2) the contractor has a long-standing practice that defines the lesser number of hours as full time. Therefore, the Jury Service Program applies to all of a contractor's full-time California employees, even those not working specifically on the County project. Full-time employees providing short-term, temporary services of 90 days or less within a 12-month period are not considered full-time for purposes of the Jury Service Program.
2. There are two ways in which a contractor might not be subject to the Jury Service Program. The first is if the contractor does not fall within the Jury Service Program's definition of "contractor." The Program defines "contractor" to mean a person, partnership, corporation or other entity which has a contract with the County or a subcontract with a County contractor and has received or will receive an aggregate sum of \$50,000 or more in any 12-month period under one or more County contracts or subcontracts. The second is if the contractor meets one of the two exceptions to the Jury Service Program. The first exception concerns small businesses and applies to contractors that have: 1) ten or fewer employees; and, 2) annual gross revenues in the preceding twelve months which, if added to the annual

amount of this contract is less than \$500,000; and, 3) is not an “affiliate or subsidiary of a business dominant in its field of operation”. The second exception applies to contractors that possess a collective bargaining agreement that expressly supersedes the provisions of the Jury Service Program. The contractor is subject to any provision of the Jury Service Program not expressly superseded by the collective bargaining agreement.

3. If a contractor does not fall within the Jury Service Program’s definition of “Contractor” or if it meets any of the exceptions to the Jury Service Program, then the contractor must so indicate in the Certification Form and Application for Exception (See Exhibit __) and include with its submission all necessary documentation to support the claim such as tax returns or a collective bargaining agreement, if applicable. Upon reviewing the contractor’s application, the County will determine, in its sole discretion, whether the contractor falls within the definition of Contractor or meets any of the exceptions to the Jury Service Program. The County’s decision will be final.

**COUNTY OF LOS ANGELES CONTRACTOR EMPLOYEE JURY SERVICE PROGRAM
APPLICATION FOR EXCEPTION AND CERTIFICATION FORM**

The County's solicitation for this contract/purchase order (Request for Proposal or Invitation for Bid) is subject to the County of Los Angeles Contractor Employee Jury Service Program (Program) (Los Angeles County Code, Chapter 2.203). All bidders or proposers, whether a contractor or subcontractor, must complete this form to either 1) request an exception from the Program requirements or 2) certify compliance. Upon review of the submitted form, the County department will determine, in its sole discretion, whether the bidder or proposer is excepted from the Program.

Company Name:		
Company Address:		
City:	State:	Zip Code:
Telephone Number:		
Solicitation For (Type of Goods or Services):		

If you believe the Jury Service Program does not apply to your business, check the appropriate box in Part I (attach documentation to support your claim); or, complete Part II to certify compliance with the Program. Whether you complete Part I or Part II, please sign and date this form below.

Part I: Jury Service Program Is Not Applicable to My Business

- ☐ My business does not meet the definition of "contractor," as defined in the Program as it has not received an aggregate sum of \$50,000 or more in any 12-month period under one or more County contracts or subcontracts (this exception is not available if the contract/purchase order itself will exceed \$50,000). I understand that the exception will be lost and I must comply with the Program if my revenues from the County exceed an aggregate sum of \$50,000 in any 12-month period.
- ☐ My business is a small business as defined in the Program. It 1) has ten or fewer employees; and, 2) has annual gross revenues in the preceding twelve months which, if added to the annual amount of this contract, are \$500,000 or less; and, 3) is not an affiliate or subsidiary of a business dominant in its field of operation, as defined below. I understand that the exemption will be lost and I must comply with the Program if the number of employees in my business and my gross annual revenues exceed the above limits.

"Dominant in its field of operation" means having more than ten employees, including full-time and part-time employees, and annual gross revenues in the preceding twelve months, which, if added to the annual amount of the contract awarded, exceed \$500,000.

"Affiliate or subsidiary of a business dominant in its field of operation" means a business which is at least 20 percent owned by a business dominant in its field of operation, or by partners, officers, directors, majority stockholders, or their equivalent, of a business dominant in that field of operation.

- ☐ My business is subject to a Collective Bargaining Agreement (attach agreement) that expressly provides that it supersedes all provisions of the Program.

OR

Part II - Certification of Compliance

- ☐ My business has and adheres to a written policy that provides, on an annual basis, no less than five days of regular pay for actual jury service for full-time employees of the business who are also California residents, **or** my company will have and adhere to such a policy prior to award of the contract.

I declare under penalty of perjury under the laws of the State of California that the information stated above is true and correct.

Print Name:	Title:
Signature:	Date:

**STANDARD CONTRACT LANGUAGE FOR THE
CONTRACTOR EMPLOYEE JURY SERVICE PROGRAM**

SECTION ____

COMPLIANCE WITH JURY SERVICE PROGRAM

A. Jury Service Program.

This Contract is subject to the provisions of the County's ordinance entitled Contractor Employee Jury Service ("Jury Service Program") as codified in Sections 2.203.010 through 2.203.090 of the Los Angeles County Code.

B. Written Employee Jury Service Policy.

1. Unless Contractor has demonstrated to the County's satisfaction either that Contractor is not a "Contractor" as defined under the Jury Service Program (Section 2.203.020 of the County Code) or that Contractor qualifies for an exception to the Jury Service Program (Section 2.203.070 of the County Code), Contractor shall have and adhere to a written policy that provides that its Employees shall receive from the Contractor, on an annual basis, no less than five days of regular pay for actual jury service. The policy may provide that Employees deposit any fees received for such jury service with the Contractor or that the Contractor deduct from the Employee's regular pay the fees received for jury service.
2. For purposes of this Section, "Contractor" means a person, partnership, corporation or other entity which has a contract with the County or a subcontract with a County contractor and has received or will receive an aggregate sum of \$50,000 or more in any 12-month period under one or more County contracts or subcontracts. "Employee" means any California resident who is a full time employee of Contractor. "Full time" means 40 hours or more worked per week, or a lesser number of hours if: 1) the lesser number is a recognized industry standard as determined by the County, or 2) Contractor has a long-standing practice that defines the lesser number of hours as full-time. Full-time employees providing short-term, temporary services of 90 days or less within a 12-month period are not considered full-time for purposes of the Jury Service Program. If Contractor uses any subcontractor to perform services for the County under the Contract, the subcontractor shall also be subject to the provisions of this Section. The provisions of this Section shall be inserted into any such subcontract agreement and a copy of the Jury Service Program shall be attached to the agreement.

3. If Contractor is not required to comply with the Jury Service Program when the Contract commences, Contractor shall have a continuing obligation to review the applicability of its "exception status" from the Jury Service Program, and Contractor shall immediately notify County if Contractor at any time either comes within the Jury Service Program's definition of "Contractor" or if Contractor no longer qualifies for an exception to the Program. In either event, Contractor shall immediately implement a written policy consistent with the Jury Service Program. The County may also require, at any time during the Contract and at its sole discretion, that Contractor demonstrate to the County's satisfaction that Contractor either continues to remain outside of the Jury Service Program's definition of "Contractor" and/or that Contractor continues to qualify for an exception to the Program.
4. Contractor's violation of this Section of the contract may constitute a material breach of the Contract. In the event of such material breach, County may, in its sole discretion, terminate the Contract and/or bar Contractor from the award of future County contracts for a period of time consistent with the seriousness of the breach.